Republic of the Philippines
SUPREME COURT
Manila

EN BANC

G.R. No. L-10394 December 13, 1958

CLAUDINA VDA. DE VILLARUEL, ET AL., plaintiffs-appellees,
vs.
MANILA MOTOR CO., INC. and ARTURO COLMENARES, defendants-appellants.

Hilado and Hilado for appellees.
Ozaeta, Gibbs and Ozaeta for appellant company.
Jose L. Gamboa and Napoleon Garcia for appellant Arturo Colmenares.

REYES, J. B. L., *J.:*

Manila Motor Co., Inc., and Arturo Colmenares interpose this appeal against the decision of the Court of First Instance of Negros Occidental, in its Civil Case No. 648, ordering the defendant Manila Motor Co., Inc. to pay to the plaintiffs Villaruel the sum of (a) P11,900 with legal rest from May 18, 1953, on which date, the court below declared invalid the continued operation of the Debt Moratorium, under the first cause of action; (b) P38,395 with legal interest from the date of filing of the original complaint on April 26, 1947, on the second cause of action; and against both the Manila Motor Co., Inc. and its co-defendant, Arturo Colmenares, the sum of P30,000 to be paid, jointly and severally, with respect to the third cause of action.

On May 31, 1940, the plaintiffs Villaruel and the defendant Manila Motor Co., Inc. entered into a contract (Exhibit "A") whereby, the former agreed to convey by way of lease to the latter the following described premises;

> (a) Five hundred (500) square meters of floor space of a building of strong materials for automobile showroom, offices, and store room for automobile spare parts;
>
> (b) Another building of strong materials for automobile repair shop; and
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> (c) A 5-bedroom house of strong materials for residence of the Bacolod Branch Manager of the defendant company.

The term of the lease was five (5) years, to commence from the time that the building were delivered and placed at the disposal of the lessee company, ready for immediate occupancy. The contract was renewable for an additional period of five (5) years. The Manila Motor Company, in consideration of the above covenants, agreed to pay to the lessors, or their duly authorized representative, a monthly rental of Three Hundred (P300) pesos payable in advance before the fifth day of each month, and for the residential house of its branch manager, a monthly rental not to exceed Fifty (P50) pesos "payable separately by the Manager".

The leased premises were placed in the possession of the lessee on the 31st day of October, 1940, from which date, the period of the lease started to run under their agreement.

This situation, the Manila Motor Co., Inc. and its branch manager enjoying the premises, and the lessors receiving the corresponding rentals as stipulated, continued until the invasion of 1941; and shortly after the Japanese military occupation of the Provincial Capital of Bacolod the enemy forces held and used the properties leased as part of their quarters from June 1, 1942 to March 29, 1945, ousting the lessee therefrom. No payment of rentals were made at any time during the said period.

Immediately upon the liberation of the said city in 1945, the American Forces occupied the same buildings that were vacated by the Japanese, including those leased by the plaintiffs, until October 31, 1945. Monthly rentals were paid by the said occupants to the owners during the time that they were in possession, as the same rate that the defendant company used to pay.

Thereafter, when the United States Army finally gave up the occupancy the premises, the Manila Motor Co., Inc., through their branch manager, Rafael B. Grey, decided to exercise their option to renew the contract for the additional period of five (5) years, and the parties, agreed that the seven months occupancy by the U. S. Army would not be counted as part of the new 5-year term. Simultaneously with such renewal, the company sublet the same buildings, except that used for the residence of the branch manager, to the other defendant, Arturo Colmenares.

However, before resuming the collection of rentals, Dr. Alfredo Villaruel, who was entrusted with the same, consulted Atty. Luis Hilado on whether they (the lessors) had the right to collect, from the defendant company, rentals corresponding to the time during which the Japanese military forces had control over the leased premises. Upon being advised that they had such a right, Dr. Villaruel demanded payment thereof, but the defendant company refused to pay. As a result, Dr. Villaruel gave notice seeking the rescission of the contract of lease and the payment of rentals from June 1, 1942 to March 31, 1945 totalling P11,900. This was also rejected by the defendant company in its letter to Villaruel, dated July 27, 1946.

Sometime on that same month of July, Rafael B. Grey offered to pay to Dr. Villaruel the sum of P350, for which, tenderer requested a receipt that would state that it was in full payment for the said month. The latter expressed willingness to accept the tendered amount provided, however, that his acceptance should be understood to be without prejudice to their demand for the rescission of the contract, and for increased rentals until their buildings were returned to them. Later, Dr. Villaruel indicated his willingness to limit the condition of his acceptance to be that "neither the lessee nor the lessors admit the contention of the other by the mere fact of payment". As no accord could still be reached between the parties as to the context of the receipt, no payment was thereafter tendered until the end of November, 1946. On December 4, 1946 (the day after the defendant company notified Dr. Villaruel by telegram, that it cancelled the power of attorney given to Grey, and that it now authorized Arturo Colmenares, instead, to pay the rent of P350 each month), the Manila Motor Co., Inc. remitted to Dr. Villaruel by letter, the sum of P350.00. For this payment, the latter issued a receipt stating that it was "without prejudice" to their demand for rents in arrears and for the rescission of the contract of lease.

After it had become evident that the parties could not settle their case amicably, the lessors commenced this action on April 26, 1947 with the Court of First Instance of Negros Occidental against the appellants herein. During the pendency of the case, a fire originating from the projection room of the City Theatre, into which Arturo Colmenares, (the sublessee) had converted the former repair shop of the Manila Motor Co. Inc., completely razed the building, engulfing also the main building where Colmenares had opened a soda fountain and refreshment parlor, and made partitions for store spaces which he rented to other persons.

Because of the aforesaid occurrence, plaintiffs demanded reimbursement from the defendants, but having been refused, they filed a supplemental complaint to include as their third cause of action, the recovery of the value of the burned buildings.

Defendants filed their amended answer and also moved for the dismissal of the plaintiffs' first and second causes of action invoking the Debt Moratorium that was then in force. The dismissal was granted by the trial court on February 5, 1951, but hearing was set as regards the third cause of action.

On August 11, 1952, the defendant company filed a motion for summary judgment dismissing the plaintiffs, third cause of action, to which plaintiffs registered objection coupled with a petition for reconsideration of the order of the court dismissing the first and second causes of action. Pending the resolution of this incident, plaintiffs, on October 2, 1953, called the court's attention to the decision in the case of Rutter vs. Esteban (93 Phil., 68; 49 Off. Gaz. [5] 1807) invalidating the continued effectivity of the Moratorium Law (R. A. 342). On November 25, 1953, the trial court denied the defendant company's motion for summary judgment and set aside its previous order dismissing the first and second causes of action. The case was accordingly heard and thereafter, judgment was rendered in plaintiffs' favor in the terms set in the opening paragraph of this decision. Thereafter, the defendants regularly appealed to this Court.

The defendants-appellants raise a number of procedural points. The first of these relates to their contention that the supplemental complaint which included a third cause of action, should not have been admitted, as it brought about a change in the original theory of the case and that it raised new issues not theretofore considered. This argument cannot be sustained under the circumstances. This action was inceptionally instituted for the rescission of the contract of lease and for the recovery of unpaid rentals before and after liberation. When the leased buildings were destroyed, the plaintiffs-lessors demanded from the defendants-lessees, instead, the value of the burned premises, basing their right to do so on defendants' alleged default in the payment of post-liberation rentals (which was also their basis in formerly seeking for rescission). This cannot be considered as already altering the theory of the case which is merely a change in the relief prayed for, brought about by circumstances occurring during the pendency of the action, and is not improper. (Southern Pacific Co. *vs*. Conway, 115 F. 2d 746; Suburban Improvement Company *vs*. Scott Lumber Co., 87 A.L.R. 555, 59 F. 2d 711). The filing of the supplements complaint can well be justified also under section 2, Rule 17 of the Rules of Court (on amendments) "to the end that the real matter in dispute and all matters in the action in dispute between the parties may, as far as possible be completely determined in a single proceedings". It is to be noted furthermore, that the admission or

rejection of this kind of pleadings is within the sound discretion of the court that will not be disturbed on appeal in the absence of abuse thereof (see Sec. 5, Rule 17, Rules of Court), especially so, as in this case, where no substantial procedural prejudice is caused to the adverse party.

It is urged that the dismissal of the first and second causes of action on February 5, 1951 had the effect of a dismissal "with prejudice" as the court did not make any qualification in its dismissal order. Appellants, apparently, lost sight of the fact that the dismissal was premised on the existence of the "Debt Moratorium" which suspended the enforcement of the obligation up to a certain time. The reference thereto by the lower court amounted to a dismissal "without prejudice", since in effect it ruled that the plaintiffs could not, *at the time they sought it*, enforce their right of action against the defendants, but plaintiffs must wait until the moratorium was lifted. In this way, the court qualified its dismissal.

Taking up the case on its merits, it is readily seen that the key to the entire dispute is the question whether the defendant-appellant Manila Motor Co., Inc. should be held liable for the rentals of the premises leased corresponding to the lapse of time that they were occupied as quarters or barracks by the invading Japanese army, and whether said appellant was placed in default by its refusal to comply with the demand to pay such rents. For if the Motor Company was not so liable, then it never was in default nor was it chargeable for the accidental lose of the buildings, nor for any damages except the rental at the contract rate from its reoccupation of the premises leased until the same were accidentally destroyed by fire on March 2, 1948.

The appellees contended, and the court below has held, that the ouster of the least company by the Japanese occupation forces from 1942 until liberation, while operating to deprive the lessee of the enjoyment of the thing leased, was, nevertheless, a mere act of trespass (*"perturbacion de mero hecho"*) that, under the Spanish Civil Code of 1889 (in force here until 1950), did not exempt the lessee from the duty to pay rent. We find that contention and ruling erroneous and untenable.

The pertinent articles of the Civil Code of Spain of 1889 provide:

> ART. 1554. It shall be the duty of the lessor;
>
> 1. To deliver to the lessee the thing which is the subject matter of the contract;
>
> 2. To make thereon, during the lease, all repairs necessary in order to keep it in serviceable condition for the purpose for which it was intended;
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> 3. To *maintain the lessee in the peaceful enjoyment of the lease during the entire term* of the contract.
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> ART. 1560. The lessor shall not be liable for any act of mere disturbance of a third person of the use of the leased property; but the lessee shall have a direct action against the trespasser.
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> It the third person, be it the Government or a private individual, *has acted in reliance upon a right*, such action shall not be deemed a mere act of disturbance. (Emphasis supplied)

Under the first paragraph of article 1560 the lessor does not answer for a mere act of trespass (*perturbacion de mero hecho*) as distinguished from trespass under color of title (*perturbacion de derecho*). As to what would constitute a mere act of trespass, this Court in the case of *Goldstein vs. Roces* (34 Phil. 562), made this pronouncement:

> Si el hecho perturbador no va acompañado ni precedido de nada que revele una intencion propiamente *juridica* en el que lo realiza, de tal suerte que el arrendatario solo pueda apreciar el hecho material desnudo de toda forma o motivacion de derecho, entendemos que se trata de una perturbacion de mero hecho.

Upon the basis of the distinction thus established between the *perturbacion de hecho* and the *perturbacion de derecho*, it is demonstrable that the ouster of the appellant by the Japanese occupying forces belongs to the second class of disturbances, *de derecho*. For under the generally accepted principles of international law (and it must be remembered that those principles are made by our Constitution a part of the law of our nation [1]) a belligerent occupant (like the Japanese in 1942-1945) may legitimately billet or quarter its troops in privately owned land and buildings for the duration of its military operations, or as military necessity should demand. The well known writer Oppenheim, discoursing on the laws of war on land, says upon this topic;

> Immovable private enemy property may under no circumstances or conditions be appropriated by an invading belligerent. Should he confiscate and sell private land or buildings, the buyer would acquire no right whatever to the property. Article 46 of the Hague Regulations expressly enacts that "private property may not be confiscated." *But confiscation differs from the temporary use of private land and building for all kinds of purposes demanded by the necessities of war. What has been said above with regard to utilization of public buildings applied equally to private buildings. If necessary, they maybe converted into hospital*

> *barracks, and stables without compensation for the proprietors, and they may also be converted into fortifications*. A humane belligerent will not drive the wretched inhabitants into the street if he can help it. But under the pressure of necessity he may be obliged to do this, and he is certainly not prohibited from doing it. (Emphasis supplied) (Oppenheim & Lauterpach, International Law, Vol. II, p. 312, 1944 Ed.)

The view thus expressed is concurred in by other writers. Hyde (International Law, Vol. 3, p. 1893, 2nd Rev. Ed.) quotes the U. S. War Department 1940 Rules of Land Warfare (Rule No. 324) to the effect that —

> The measure of permissible devastation is found in the strict necessities of war. As an end in itself, as a separate measure of war, devastation is not sanctioned by the law of war. There must be some reasonably close connection between the destruction of property and the overcoming of the enemy's army. Thus the rule requiring respect for private property is not violated through damage resulting from operations, movements, or combats of the army; that is, real estate may be utilized for marches, camp sites, construction of trenches, etc. *Buildings may be used for shelter for troops*, the sick and wounded, for animals, for reconnaissance, cover defense, etc. Fence, woods, crops, buildings, etc., may be demolished, cut down, and removed to clear a field of fire, to construct bridges, to furnish fuel if imperatively needed for the army. (Emphasis supplied)

Reference may also be made to Rule 336:

> *What may be requisitioned*. — Practically everything may be requisitioned under this article (art. LII of the regulations above quoted) that is necessary for the maintenance of the army and not of direct military use, such as fuel, food, forage, clothing, tobacco, printing presses, type, leather, cloth, etc. *Billeting of troops for quarters and subsistence is also authorized*. (Emphasis supplied)

And Forest and Tucker state:

> The billegerent occupant may destroy or appropriate public property which may have a hostile purpose, as forts, arms, armories, etc. The occupying force may enjoy the income from the public sources. *Strictly private property should be inviolable, except so far as the necessity of war requires contrary action*. (Forest and Tucker, International Law, 9th Ed., p. 277) (Emphasis supplied)

The distinction between confiscation and temporary sequestration of private property by a belligerent occupant was also passed upon by this Court in Haw Pia vs. China Banking Corporation, 80 Phil. 604, wherein the right of Japan to sequester or take temporary control over enemy private property in the interest of its military effort was expressly recognized.

We are thus forced to conclude that in evicting the lessee, Manila Motor Co., Inc. from the leased buildings and occupying the same as quarters for troops, the Japanese authorities acted pursuant to a right recognized by international and domestic law. Its act of dispossession, therefore, did not constitute *perturbacion de hecho* but a *perturbacion de derecho* for which the lessors Villaruel (and not the appellants lessees) were liable (Art. 1560, *supra*) and for the consequences of which said lessors must respond, since the result of the disturbance was the deprivation of the lessee of the peaceful use and enjoyment of the property leased. Wherefore, the latter's corresponding obligation to pay rentals ceased during such deprivation.

The Supreme Court of Spain, in its *Sentencia* of 6 December 1944, squarely declared the resolutory effect of the military sequestration of properties under lease upon the lessee's obligation to pay rent (Jurisprudencia Civil, Segunda Serie, Tomo 8, pp. 583, 608):.

> Considerando que para resolver acerca de la procedencia del presente recurso es preciso partir de las bases de hecho sentadas en la sentencia recurrida, y no impugnadas al amparo del numero 7. del articulo 1.692 de la Ley de Enjuiciamiento civil, es decir, de que hallandose vigente el contrato de arrendamiento celebrado entre actor y demandada, en fecha que no se precisa, entre los dias del 18 al 31 de julio de 1936, los locales objeto de dicho contrato de arrendamiento, y en los que no funcionaba de tiempo anterior la industria para cuyo ejercicio se arrendaron, fueron requisados por el Ejercito Nacional, con motivo de la guerra civil, para que se instalara en los mismos la Junta de Donativos al Ejercito del Sur, aun cundo en dicha incautacion, que se hizo a la propiedad de la finca, no se observaron las formalidades legales, a causa de las circunstancias extraordinarias por que a la sazon atravesaba Sevilla, hecho que no consta se hiciera saber por los arrendatarios demandados al actor, pero que fue notorio en aquella capital, donde residia el actor, que de el debio tener conocimiento. Se estima igualmente por la Sala que el hecho de que la industria no funcionara en el local no tuvo influencia alguna sobre su incautacion por el Ejercito.
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> Considerando que sobre tales bases de hecho es de desestimar el primer motivo del recurso: violacion de los articulos 1.254, 1.278 y 1.091 del Codigo civil, que sancionan, en terminos generales, la eficacia de los contratos, puesto que en el presente caso de los que se trata en definitiva es de determinar si por virtud de fuerza mayor, la requisa a que se hace referencia, ajena, por lo tanto, a culpa, asi del arrendatario como del arrendador, se vio aquel privado del posible disfrute de la finca arrendada, y de si por virtud de esta

> circunstancia esta o no exento de la obligacion de abonar la renta pactada durante el tiempo que subsistio la incautacion; y es indudable la afirmativa en cuanto al primer extremo, puesto que la sentencia recurrida establece que el hecho de que no funcionase la industria y estuvieran los locales cerrados no actuo como causa de la requisa de estos por el Ejercito.
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> Considerando que la sentencia recurrida, en cuanto no da lugar al pago de las rentas correspondientes al tiempo que duro la incautacion, lejos de infringir, por aplicacion indebida, el art. 1.568 del Codigo civil, se ajusta la orientacion marcada en el mismo, puesto que este precepto legal dispone que el arrendatario tiene accion contra el tercero perturbador de mero hecho en la posesion de la finca arrendada, pero no contra la Administracion o contra los que obran en virtud de un derecho que les corresponde; y aqui la perturbacion que experimento el arrendador en su posesion, como consecuencia de la requisa, no puede calificarse como de mero hecho, conforme al citado articulo, puesto que la finca fue requisada por la autoridad militar para fines de guerra, de donde se sigue que el arrendatario tenia que soportar la privacion de su tenencia material a traves del arrendador, con quien ha de entenderse la requisa de la cosa arrendada.

In addition, the text of Art. 1560, in its first paragraph (*jam quot*.) assumes that in case of mere disturbance (*perturbacion de mero hecho*) "the lessee shall have a direct action against the trespasser." This assumption evidently does not contemplate the case of dispossession of the lessee by a military occupant, as pointed out by Mr. Chief Justice Paras in his dissenting opinion in *Reyes vs. Caltex* (Phil.) Inc., 84 Phil. 669; for the reason that the lessee could not have a direct action against the military occupant. It would be most unrealistic to expect that the occupation courts, place under the authority of the occupying belligerent, should entertain at the time a suit for forcible entry against the Japanese army. The plaintiffs, their lawyers, and in all probability, the Judge and court personnel, would face "severest penalties" for such defiance of the invader.

The present case is distinguishable from *Lo Ching vs. Archbishop of Manila* (81 Phil., 601) in that the act of the Japanese military involved in the latter case clearly went beyond the limits set by the Hague Conventions, in seizing the property and delivering it to another private party; and from *Reyes vs. Caltex* (Phil.) Inc., 84 Phil. 654, in that the rights of the military occupant under international law were not raised or put in issue in said case; and moreover, the lessee there, by failing to rescind the lease upon seizure of the premises by the Japanese military, despite the stipulated power to do so, resumed business and decided to hold unto the long term lease for the balance of its 20-year period, starting from December 23, 1940. In the case before us, the occupation of the leased property by the Japanese army covered the major portion of the five-year contractual period, without any option to rescind by the lessee.

The lessor's position is not improved by regarding the military seizure of the property under lease as a case of *force majeure* or fortuitous event. Ordinarily, a party may not be held responsible therefor, despite the fact that it prevented compliance of its obligations. But lease being a contract that calls for prestations that are both reciprocal and repetitive (*tractum successivum*), the obligations of either party are not discharged at any given moment, but must be fulfilled all throughout the term of the contract. As a result, any substantial failure by one party to fulfill its commitments at any time during the contract period gives rise to a failure of consideration (causa) for the obligations of the other party and excuses the latter from the correlative performance, because the causa in lease must exist not only at the perfection but throughout the term of the contract. No lessee would agree to pay rent for premises he could not enjoy. As expressed by Marcel Planiol (quoted in 4 Castan, Derecho Civil, 7th Edition, p. 264) —

> Como la obligacion del arrendador es sucesiva y se renueva todos los dias, la subsistencia del arrendamiento se hace imposible cuando, por cualquier razon, el arrendador no puede ya procurar al arrendatario el disfrute de la cosa.

This effect of the failure of reciprocity appears whether the failure is due to fault or to fortuitous event; the only difference being that in case of fault, the other party is entitled to rescind the contract *in toto*, and collect damages, while in casual non-performance it becomes entitled only to a suspension *pro tanto* of its own commitments. This rule is recognized in par. 2 of Art. 1558, authorizing the lessee to demand reduction of the rent in case of repairs depriving him of the possession of part of the property; and in Art. 1575, enabling the lessee of rural property to demand reduction of the rent if more than one-half of the fruits are lost by extraordinary fortuitous event. Of course, where it becomes immediately apparent that the loss of possession or enjoyment will be permanent, as in the case of accidental destruction of a leased building, the lease contract terminates.

Applying these principles, the *Sentencia* of December 1944, already adverted to, ruled as follows:

> Considerando que privado el arrendador, por tal hecho, del disfrute de esta, es manifiesta la imposibilidad en que se vio de cumplir la tercera de las obligaciones que el impone el articulo 1.554 del Codigo Civil, obligacion (la de mantener al arrendatario en el disfrute de la cosa arrendada) que ha de entenderse reciproca de la de pago de renta pactada, que impone al arrendatario el numero primero del art. 1.555 de dicho Cuerpo legal, y por ello no puede ser exigida.

> Considerando que, aunque no sean estrictamente aplicables al caso los articulos 1.124, 1.556 y 1.568, que se citan como infringidos por el recurrente, suponiendo que a ellos ha entendido referirse la Audiencia (lo que impediria, en todo caso, la estimacion del recurso por este motivo, ya que dichos articulos no se citan en la sentencia de instancia), es evidente que ellos proclaman la reciprocidad de las obligaciones entre arrendatario y arrendador, y en este sentido, tratandose de un incumplimiento inculpable decontrato, pueden servir, como tambien el 1.558, en cuanto preven la reduccion de rentas o posible restriccion del contrato cuando el arrendatario se ve privado, por obras realizadas en la finca arrendada, del disfrute de este, de fundamento, con los demas preceptos invocados, a una extencion de renta mientras subsiste la imposibilidad de utilizar la cosa arrendada, sobre todo cuando los articulos 157 y 158 del Reglamento de Requisas de 13 de enero de 1921 estatuyen claramente que las requisas de edificio se hacen a la propiedad, y es el propietario el que puede pedir indemnization, uno de cuyos elementos es el precio del alquiler que le sea satisfecho por el inmueble incautado.

We are aware that the rule in the common law is otherwise, due to its regarding a lease as a conveyance to the lessee of a temporary estate or title to the leased property so that loss of possession due to war or other fortuitous event leaves the tenant liable for the rent in the absence of stipulation. The fundamental difference between the common law and the civil law concepts has been outlined by the United States in *Viterbo vs. Friedlander*, 30 L. Ed. (U.S.) pp. 776, 778, in this wise:

> But as to the nature and effect of a lease for years, at a certain rent which the lessee agrees to pay, and containing no express covenant on the part of the lessor, the two systems differ materially. The common law regards such a lease as the grant of an estate for years, which the lessee takes a title in, and is bound to pay the stipulated rent for, notwithstanding any injury by flood, fire or external violence, at least unless the injury is such a destruction of the land as to amount to an eviction; and by that law the lessor is under no implied covenant to repair, or even that the premises shall be fit for the purpose for which they are leased. *Fowler vs. Bott*, 6 Mass. 63; 3 Kent, Com. 465, 466; Broom, Legal Maxims, 3d ed. 213, 214; *Doupe vs. Genin*, 45 N. Y. 119; *Kingbury vs. Westfall*, 61 N. Y. 356. *Naumberg vs. Young*, 15 Vroom, 331; *Bowe vs. Hunking*, 135 Mass. 380; *Manchester Warehouse Co. vs. Carr*, L.R. 5 C.P.D. 507.
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> The civil law, on the other hand, regards a lease for years as a mere transfer of the use and enjoyment of the property; and holds the landlord bound, without any express covenant, to keep it in repair and otherwise fit for use and enjoyment for the purpose for which it is leased, even when the need of repair or the unfitness is caused by an inevitable accident, and if he does not do so, the tenant may have the lease annulled, or the rent abated. Dig. 19, 2, 9, 2; 19, 2, 15, 1, 2; 19, 2, 25, 2; 19, 2, 39; 2 Gomez, Variae Resolutiones c. 3, secs. 1-3, 18, 19: Gregorio Lopez in 5 Partidas, tit. 8, 11. 8, 22; Domat, Droit Civil, pt. 1, lib. 1, tit. 4, sec. 1, no. 1; sec. 3 nos. 1, 3, 6, Pothier, Contract de Louage, nos. 3, 6, 11, 22, 53, 103, 106, 139-155.
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> It is accordingly laid down in the Pandects, on the authority of Julian, "If anyone has let an estate, that, even if anything happens by *vis major*, he must make it good, he must stand by his contract," *si quis fundum locaverit, ut, etiamsi quid vi majore accidisset, hoc ei praestaretur, pacto standum esse*; Dig. 19, 2, 9, 2; and on the authority of Ulpian, that "A lease does not change the ownership," *non solet locatio dominiun mutare*; Dig. 19, 2, 39; and that the lessee has a right of action, if he cannot enjoy the thing which he has hired, *si re quam conduxit frui non liceat*, whether because his possession, either of the whole or of part of the field, is not made good, or a house, or stable or sheepfold, is not repaired; *and the landlord ought to warrant the tenant, dominum colono praestare debere, against every irresistible force, omnim vim cui resisti non potest, such as* floods, flocks of birds, or any like cause, or *invasion of enemies*; and if the whole crop should be destroyed by a heavy rainfall, or the olives should be spoiled by blight, or by extraordinary heat of the sun, *solis fervore non assueto*, it would be the loss of the landlord, *damnum domini futurum*; and so if the field falls in by an earthquake, for there must be made good to the tenant a field that he can enjoy, *oportere enim agrum praestari conductori, ut frui possit*; but if any loss arises from defects in the thing itself, *si qua tamen vitia ex ipsa re oriantur*, as if wine turns sour, or standing corn is spoiled by worms or weeds, or if nothing extraordinary happens, *si vero nihil extra consuetudinem acciderit*, it is the loss of the tenant, damnum coloni esse. Dig. 19, 2; 15, 1, 2. (Emphasis supplied)

In short, the law applies to leases the rule enunciated by the Canonists and the Bartolist School of Post glossatorse, that "*contractus qui tractum successivum habent et dependentiam de futuro, sub conditione rebus sic stantibus intelliguntur*," they are understood entered subject to the condition that things will remain as they are, without material change.

It is also worthy of note that the lessors, through Dr. Javier Villaruel, agreed after liberation to a renewal of the contract of lease for another five years (from June 1, 1946 to May 31 of 1951) without making any reservation regarding the alleged liability of the lessee company for the rentals corresponding to the period of occupancy of the premises by the Japanese army, and without insisting that the non-payment of such rental was a breach of the contract of lease. This passivity of the lessors strongly supports the claim of the lessees that the rentals in question were verbally waived. The proffered explanation is that the lessors could not refuse to renew the lease,

because the privilege of renewal had been granted to the lessees in the original contract. Such excuse is untenable: if the lessors deemed that the contract had been breached by the lessee's non-payment of the occupation rents how could they admit the lessee's right to renew a contract that the lessee itself had violated?

But this is not all. The lessors accepted payment of current rentals from October 1945 to June 1946. It was only in July 1946 that they insisted upon collecting also the 1942-1945 rents, and refused to accept further payments tendered by the lessee unless their right to collect the occupation rental was recognized or reserved. After refusing the rents from July to November 1946, unless the lessee recognized their right to occupation rentals, the appellees (lessors) demanded rescission of the contract and a rental of P1,740 monthly in lieu of the stipulated P350 per month. (Exhibit "C").

This attitude of the lessors was doubly wrongful: first, because as already shown, the dispossession by the Japanese army exempted the lessee from his obligation to pay rent for the period of its ouster; and second, because even if the lessee had been liable for that rent, its collection in 1946 was barred by the moratorium order, Executive Order No. 32, that remained in force until replaced by Rep. Act 342 in 1948. To apply the current rentals to the occupation obligations would amount to enforcing them contrary to the moratorium decreed by the government.

Clearly, then, the lessor' insistence upon collecting the occupation rentals for 1942-1945 was unwarranted in law. Hence, their refusal to accept the current rentals without qualification placed them in default (*mora creditoris or accipiendi*) with the result that thereafter, they had to bear all supervening risks of accidental injury or destruction of the leased premises. While not expressly declared by the Code of 1889, this result is clearly inferable from the nature and effects of *mora*, and from Articles 1185, 1452 [par. 3] and 1589).

> ART. 1185. When the obligation to deliver a certain and determinate thing arises from the commission of a crime or misdemeanor the obligor shall not be exempted from the payment of its value, whatever the cause of its loss may have been, unless, having offered the thing to the person entitled to receive it, the latter should have refused without reason to accept it.
>
> Art. 1452. . . . .
>
> If fungible things should be sold for a price fixed with relation to weight, number, or measure, they shall not be at the purchaser's risk until they have been weighed, counted, or measured, unless the purchaser should be in default.
>
> ART. 1589. If the person who contracted to do the work bound himself to furnish the materials, he shall bear the loss in case of the destruction of the work before it is delivered, unless its acceptance has been delayed by the default of the other party.

While there is a presumption that the loss of the thing leased is due to the fault of the lessee (Civil Code of 1889, Art. 1563), it is noteworthy that the lessor have not invoked that presumption either here or in the court below. On the contrary, the parties and the trial court have all proceeded and discussed the issues taking for granted that the destruction of the leased buildings was purely fortuitous. We see no reason for departing from that assumption and further prolonging this litigation..

That the lessee and sublessee did not consign or deposit in court the rentals tendered to and improperly rejected by the lessors, did not render the debtor liable for default (*mora solvendi*) nor answerable for fortuitous events because, as explained by the Supreme Court of Spain in its *Sentencia* of 5 June 1944 —

Al exigir el art. 1176 del Codigo Civil la consignacion para liberar al deudor *no quiere decir que necesariamente haya de practicarse*, y no baste el ofrecimiento de pago que de aquella no fuere seguido, a efectos de exclusion de las consecuencias de la mora solvendi. (8 Manresa, Comentarios, 5th Ed., Vol. 1, p. 136).

In other words, the only effect of the failure to consign the rentals in court was that the obligation to pay them subsisted (P.N.B. *vs*. Relativo, 92 Phil., 203) and the lessee remained liable for the amount of the unpaid contract rent, corresponding to the period from July to November, 1946; it being undisputed that, from December 1946 up to March 2, 1948, when the commercial buildings were burned, the defendants-appellants have paid the contract rentals at the rate of P350 per month. But the failure to consign did not eradicate the default (*mora*) of the lessors nor the risk of loss that lay upon them. (3 Castan, Der. Civ., 8th Ed., p. 145; 4 Puig Peña, Der. Civ., part. 1, p. 234; Diaz Pairo, Teoria Gen. de las Obligaciones [3rd Ed.], Vol. 1, pp. 192-193).

In view of the foregoing, we hold:

(a) That the dispossession of the lessee from the premises by the Japanese army of occupation was not an act of mere trespass (*perturbacion de mero hecho*) but one de derecho chargeable to the lessors;

(b) That such dispossession, though not due to fault of lessors or lessee, nevertheless resulted in the exemption of the lessee from its obligation to pay rent during the period that it was deprived of the possession and enjoyment of the premises leased;

(c) That the insistence of the lessors to collect such rentals was unwarranted;

(d) That the lessors were not justified in refusing to accept the tender of current rentals unless the lessee should recognize their right to the rents corresponding to the period that the lessee was not in possession;

(e) That by their improper refusal to accept the current rents tendered by the lessee, the lessors incurred in default (*mora*) and they must shoulder the subsequent accidental loss of the premises leased;

(f) That the *mora* of the lessors was not cured by the failure of the lessee to make the consignation of the rejected payments, but the lessee remained obligated to pay the amounts tendered and not consigned by it in court.

Consequently, it was reversible error to sentence the appellants to pay P2,165 a month as reasonable value of the occupation of the premises from July 1946, and the value of the destroyed buildings amounting to P30,000.

Wherefore, the decision appealed from is modified in the sense that the appellant Manila Motor Company should pay to the appellees Villaruel only the rents for the leased premises corresponding to the period from July up to November 1946, at the rate of P350 a month, or a total of P1,750. Costs against appellees in both instances. So ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion and Endencia, JJ., concur.

Footnotes

1 "Art. 2. Sec. 3. — The Philippines renounces war as an instrument of national policy, and adopts the generally accepted principles of international law as part of the law of the nation." (Constitution of the Philippines)--Applied in Go Kim Chan vs. Valdez, 75 Phil. 113; Tubb vs. Griess, 78 Phil. 249; Dizon vs. Commanding General, 81 Phil. 286.

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